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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,890	07/07/2000	MAREK LAGODZINSKI		3134

7590 01/15/2002

PATRADE INTERNATIONAL  
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EXAMINER

WEEKS, GLORIA R

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/582,890

Applicant(s)

LAGODZINSKI ET AL.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8- are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 8, line 10; claim 9, line 2; the phrases "bellowslike" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "bellowslike"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melocco (USPN 5,901,894) in view of Dohl et al. (USPN 5,687,899).

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In reference to claim 1, Melocco discloses an actuated piston tool with piston automatic return, comprising an external barrel (1) with a guiding barrel (7) situated there within the guiding barrel (7), operatively connected therewith, and means for automatic return of piston means from its fastening position (figure 3) to its firing position (figure 2), situated on piston shank (21) between piston head (9) and fastener guide (6), the means for automatic piston return is one-piece elastic returning bush (11) made of elastomeric material (column 2, lines 8-10) in the shape of bellow, whose diameters both external and internal are regularly varied, creating uniformly spaced swellings and narrowings of wave like structure (figures 2-3; column 1, lines 59-67; column 4, lines 6-17, 23-28). Melocco's disclosed piston tool is operated by high-pressure gas, not power. Dohl et al. teaches a power actuate piston tool with piston automatic return. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the high-pressure gas used to actuate the power tool of Melocco to use power as taught by Dohl et al.

Regarding claim 2 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the walls of returning bush (11) are approximate in shape to a sinusoid, or to a stack of frusto-spherical segments, or to a stack of frusto-conical segments, or to a stack of barrel shape segments and/or other surface of revolution segments (figures 2-3; column 1, lines 59-67; column 4, lines 6-17, 23-28).

With respect to claim 3 and its limitation as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the maximal internal diameter of at least one segment of the returning bush (11) at its both ends, is

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of smaller size than respective diameter of the remaining segments (figure 2, column 2, lines 65-67; column 3, lines 1-5).

In reference to claim 4 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the end segment walls of returning bush (11) are thicker than other segment walls (figure 2 column 2, lines 32-35, 65-67; column 3, lines 1-5; column 4, lines 6-17).

Regarding claim 5 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the internal end surface of external segments of returning bush (11) is markedly curved outside in such a way, that the position of curvature points is clearly distanced from the returning bush face (figures 2-3; column 4, lines 6-17).

With reference to claim 6 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the length of the returning bush (11) is selected in such a way, that after initial blocking, the piston shank (8) end face does not reach its extreme forward position and remains at a distance from the base, the distance greater than the head height of fastening element (column 4, lines 18-22).

In reference to claim 7 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein the maximal external diameter of the return bush (11) is smaller enough than the internal diameter of the guiding barrel (7), that after the initial blocking of the returning bush (11), its external diameter still remains smaller than the internal diameter of the guiding barrel (7), thus preserving the small clearance (column 4, lines 23-28).

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Regarding claim 8, Melocco discloses a power operated piston tool with a piston automatic return comprising an outer barrel (1) having a firing chamber (19) at a first end; a guiding barrel (7) mounted in the outer barrel; a fastener guide (6) having an outer surface at a thin end and mounted at a thick part in the guiding barrel (7) and with the thin end standing out from the outer barrel; a piston (21) provided with a piston head (9) placed in the guiding barrel (7) and a piston shank (8) inserted in the fastener guide (6) wherein the piston is movably positioned between a firing position (figure 2) and a fastening position (figure 3); a firing-pin assembly mounted at the first end of the outer barrel (figures 2-3; column 3, lines 37-40) and a bellowslike hollow element (11) for an automatic return of the piston from the fastening position (figure 3) to the firing position (figure 2) and situated on the piston shank (8) between the piston head (9) and the fastener guide (6) and made of elastomeric material (column 2, lines 8-10) wherein an outer diameter of the bellowslike hollow element (11) and an internal diameter of the bellowslike hollow element (11) are regularly varied creating uniformly spaced swellings and narrowings running circularly on an outer surface and an inner surface of the bellowslike element (11) and wherein between each two neighboring narrowings is formed a segment with a sinusoidal or a frusta-spherical or a frusta-conical or a barrel wall contour (). Melocco's disclosed piston tool is operated by high-pressure gas, not power. Dohl et al. teaches a power actuate piston tool with piston automatic return. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the high-pressure gas used to actuate the power tool of Melocco to use power as taught by Dohl et al.

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With respect to claim 9 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a maximal inner diameter of at least one of the segments of the bellowslike hollow element (11) at its both ends is smaller than an inner diameter of remaining segments ().

In reference to claim 10 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein walls of outer segments of the bellowslike hollow element (11) are thicker than all of inner segments ().

Regarding claim 11 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein an inner end surface of outer segments of the bellowslike hollow element (11) is outwardly curved ().

With reference to claim 12 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a sum of wall thickness of all segments of the bellowslike hollow element (11) and a length of the fastener guide (6) is slightly larger than a sum of a length of the piston shank (8) and a thickness of a fastener head (column 2, lines 29-35) thereby a piston shank (8) end face is distance from the outer surface of the fastener guide (6; figure 3) slightly more than the thickness of the fastener head in an initial blocking position of the piston (21; column 4, lines 18-22).

In reference to claim 13, Melocco discloses a power operated piston tool with a piston automatic return comprising an outer barrel (1) having a firing chamber (19) at a first end; a guiding barrel (7) mounted in the outer barrel; a fastener guide (6) having an outer surface at a thin end and mounted at a thick part in the guiding barrel (7) and with the thin end standing out from the outer barrel; a piston (21) provided with a piston head (9) placed in the guiding barrel

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(7) and a piston shank (8) inserted in the fastener guide (6) wherein the piston is movably positioned between a firing position (figure 2) and a fastening position (figure 3); a firing-pin assembly mounted at the first end of the outer barrel (figures 2-3; column 3, lines 37-40); and a one-piece hollow element (11) formed of segments and situated on the piston shank (8) between the piston head (9) and the fastener guide (6) and made of elastomeric material (column 2, lines 8-10) wherein a sum of a length of the fastener guide (6) and a length of the one-piece hollow element (11) in a state when wall surfaces of neighboring segments of the one-piece element (11) are in an introductory contact is slightly larger than a sum of a length of the piston shank (3) and a thickness of a fastener head thereby a piston shank (8) end face is distanced from the outer surface of the fastener guide (6) slightly more than the thickness of the fastener head in an initial blocking position of the piston (figure 3, column 4, lines 6-22). Melocco's disclosed piston tool is operated by high-pressure gas, not power. Dohl et al. teaches a power actuate piston tool with piston automatic return. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the high-pressure gas used to actuate the power tool of Melocco to use power as taught by Dohl et al.

Regarding claim 14 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a wall of each segment of the segments of the one-piece hollow element (11) has a sinusoidal profile (figure 2; column 1, lines 59-67; column 2, lines 1-7).

With reference to claim 15 and its limitations as state above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a wall of



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each segment of the segments of the one-piece hollow element (11) has a frustum of sphere profile (figure 2; column 1, lines 59-67; column 2, lines 1-7).

In reference to claim 16 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a wall of each segment of the segments of the one-piece hollow element (11) has a frustum of a cone profile (figure 2; column 1, lines 59-67; column 2, lines 1-7).

Regarding claim 17 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a wall of each segment of the segments of the one-piece hollow element (11) has a barrel profile (figure 2; column 1, lines 59-67; column 2, lines 1-7).

With reference to claim 18 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein a wall of each segment of the segments of the one-piece hollow element (11) has a frustum or barrel profile (figure 2; column 1, lines 59-67; column 2, lines 1-7).

In reference to claim 19 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein an inner end surface of outer segments of the one-piece hollow element is outwardly curved (figure 2; column 1, lines 59-67; column 2, lines 1-7).

Regarding claim 20 and its limitations as stated above, the modified apparatus of Melocco discloses a power actuated piston tool with piston automatic return wherein walls of outer segments of the one-piece hollow element (11) are thicker than walls of inner segments (figure 2; column 1, lines 59-67; column 2, lines 1-7, 32-35).

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*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 6:30 am - 5:00 pm Monday-Thursday..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7769 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1789.

Gloria R Weeks  
Examiner  
Art Unit 3721

grw  
January 8, 2002



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)  
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.